

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 8437 of 2006(S)

O.A.273/2004 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH

PETITIONER:

ASHA THEROSE JOSEPH,
AGED 43 YEARS,
W/O.LATE HUBERT INNOCENT JOSEPH,
TRAINED GRADUATE TEACHER (MATHS),
KOCHUVEETIL HOUSE, XI/798, PATALAM ROAD,
COCHIN-682 001.

BY ADV. SMT.SUMATHY DANDAPANI (SR.).

RESPONDENTS:

1. THE COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN,
SHAHEED JEET SINGH MARG,
NEW DELHI-110018.

2. THE ASSISTANT COMMISSIONER,
KENDRIYA VIDYALAYA SANGATHAN,
REGIONAL OFFICE, IIT CAMPUS,
CHENNAI-600036.

BY ADV. SRI.V.V.ASOKAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P.(C). NO.8437/2006-S:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 02/05/2003 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM, IN O.A. NO. 373/2003.

EXT.P.2: COPY OF THE ORDER DTD. 17/06/2003 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM, IN MA NO. 458/2003 IN O.A. NO. 373/2003.

EXT.P.3: COPY OF THE ORDER DTD. 25/06/2003 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM, IN O.A. NO. 373/2003.

EXT.P.4: COPY OF THE ORDER DTD. 03/07/2003 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A. NO. 373/2003.

EXT.P.5: COPY OF THE ORDER DTD. 26/09/2003 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL IN O.A. NO. 373/2003.

EXT.P.6: COPY OF THE LETTER DTD. 17/18-03-2004 ISSUED BY THE EDUCATION OFFICER, KVS, NEW DELHI, TO THE ASSISTANT COMMISSIONER, KVS, CHENNAI.

EXT.P.7: COPY OF THE O.A. NO. 273/2004 DTD. 10/04/2004 FILED BY THE PETITIONER BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM.

EXT.P.8: COPY OF THE REPLY STATEMENT DTD. 27/10/2004 FILED BY THE ASSISTANT COMMISSIONER, MVS, CHENNAI REGION, ON BEHALF OF THE RESPONDENTS.

EXT.P.9: COPY OF THE ORDER DTD. 22/12/2005 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM, IN O.A. NO. 273/2004.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, J.

W.P.(C) NO. 8437 OF 2006-S

Dated 31st October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a Trained Graduate Teacher (Maths) working under the respondents.

2. The brief facts of the case are the following: While working in the Kendriya Vidyalaya, Naval Base, Cochin, she was transferred by order dated 31.3.2003 to Chiri Miri in Jabalpur Region. Pursuant to the said order, she was relieved on 16.4.2003. The copy of the transfer order was served on her only on the said date. She filed O.A.No.373/2003 before the Central Administrative Tribunal, Ernakulam Bench, challenging the said order. The C.A.T by Ext.P2 interim order dated 17.6.2003, ordered that the non-joining duty at Chiri Miri will not affect her prejudicially. Immediately on receipt of the transfer order, the petitioner filed a representation before the competent authority, claiming that there is a vacancy in the Kendriya Vidyalaya, INS Dronacharya, Kochi and she may be accommodated there.

The Tribunal by Ext.P1 order dated 2.5.2003, directed the competent authority to consider her representation within three weeks from the date of that order. Apparently, in obedience to the said direction, the transfer of the petitioner to Chiri Miri was cancelled and she was posted to Thakolam in Tamil Nadu on 19.6.2003. On the motion made by the petitioner, the Tribunal also passed Ext.P3 order dated 25.6.2003, directing that no appointment shall be made to the vacancy of TGT (Maths) in the Kendriya Vidyalaya, INS Dronacharya, Kochi. The motion was made by the petitioner, as the authorities took steps to fill up a vacancy in the said Kendriya Vidyalaya by issuing public notification.

3. The respondents filed a reply statement in the above O.A and it was finally heard and reserved for orders on 3.7.2003. On the said date Ext.P4 interim order was passed, directing that Exts.P2 and P3 interim orders will remain in force until the disposal of the O.A. Finally, the O.A was disposed of by Ext.P5 order dated 26.9.2003. The operative portion of the said order reads as follows:

“In view of the facts and in the circumstances discussed above, we direct the 1st respondent to consider the applicant's case and cause necessary orders to be issued permitting the applicant to remain as TGT (Maths) in the same station in any of the K.Vs in the same station including KV, INS Dronacharya. Necessary orders in that regard shall be passed and served on the applicant within a period of one month from

the date of receipt of copy of this order. Subject to the above direction the interim orders already issued in this case are deemed to be vacated. There is no order as to costs.”

4. Within the time limit in the above order, the competent authority failed to pass fresh orders. Therefore, the petitioner filed a contempt application on 20.11.2003. Thereafter, by order dated 15.12.2003, the petitioner was allowed to join duty at INS Dronacharya, Kochi and she joined there on 16.12.2003. She was retained at INS Dronacharya for a period of one year and thereafter she has been transferred out . The petitioner represented that the period she was out of service from 16.4.2003 to 15.12.2003 may be treated as duty for all purposes. Her representation in this regard was rejected by Ext.P6 order dated 17/18.3.2004. She was advised to apply for leave for the said period by the said communication. Challenging the said order, O.A.No.273/2004 was filed before the C.A.T. The said O.A was finally heard and dismissed by Ext.P9 order. This writ petition was filed, challenging the said order of the C.A.T.

5. According to the petitioner, the said period should have been treated as duty, as she was continuing at Kochi on the strength of the interim order passed by the C.A.T., during the pendency of the O.A filed by her. At any rate, she prays, the said period may be treated as duty without pay, so that she can get the benefit of the above period for other service benefits

other than pay and allowances.

6. The respondents have filed a counter affidavit, resisting the prayers in the writ petition. According to them, the petitioner was out of service from 16.4.2003 to 15.12.2003 without any justification. She did not do any work and therefore, she is not entitled to get any pay. The Tribunal has rightly rejected her claim, it is submitted.

7. Heard the learned counsel on both sides. During the relevant year, the Kendriya Vidyalaya was reopened after vacation on 23.6.2003. So, in the absence of any order, normally, the petitioner should have joined duty at Chiri Miri by that time. But, the Tribunal on 17.6.2003 passed an order stating that her non-joining duty at Chiri Miri will not affect her prejudicially. In the meantime the transfer to Chiri Miri was already cancelled and she was transferred to Thakolam, by order dated 19.6.2003. Therefore, the said interim order was of no avail to her. It was only an infructuous order. But, whatever be that, the non-joining of duty till the reopening day, could not, normally affect her, as a teacher need not necessarily join duty during the vacation period. She is entitled to enjoy the vacation and she could have waited till 23.6.2003 for joining duty. There was a positive direction in Ext.P5 order to accommodate the petitioner in some Kendriya Vidyalaya at Cochin or in the Kendriya Vidyalaya, INS

Dronacharya, Kochi. The omission of the respondents to allow her to join a school at Cochin at least from 20.11.2003, the date on which the contempt application was filed, is unjustified. It is true, she remained out of service between 23.6.2003 and 20.11.2003, without the support of any order of the C.A.T. But, we notice that finally the O.A filed by the petitioner has been allowed by Ext.P5 order. There is a positive direction to accommodate her in some Kendriya Vidyalaya at Cochin. The Tribunal passed such an order, as the respondents are owing a duty to her in this regard. We notice that though the Tribunal did not quash the order transferring the petitioner to Thakolam, the respondents were positively directed to post her at Cochin. So, the petitioner's entitlement to get a posting at Cochin and the corresponding duty of the respondents have been taken note of by the C.A.T. If that be so, we feel that there is no justification for treating the aforementioned period as break of service for the petitioner. The competent authority has directed the petitioner to apply for leave. Since there is no leave to her credit, the said order is of no avail to her. Therefore, having regard to the facts of the case, we feel that the said period should be treated as extraordinary leave without pay and allowances. In other words, the petitioner should get other service benefits other than pay and allowances for the aforementioned period. If the petitioner submits an application along

with a copy of this judgment before the competent authority, praying to treat the period of her absence as extraordinary leave without pay and allowances, the same shall be allowed by the said authority without delay.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/